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IN THE

Supreme Court of the United States

OCTOBER TERM, 1953.

No. 187

HUBERT VAN HOOK,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

HUBERT VAN HOOK,
Petitioner.

THE DARNELL-WARREN PRINTING COMPANY, CHICAGO

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PETITION FOR A WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

Your petitioner, Hubert Van Hook, respectfully prays that a writ of certiorari may issue to the United States Court of Appeals for the Seventh Circuit to review its opinion and judgment reversing a judgment of the District Court which allowed to petitioner the benefits of Section 107 (a) of the Internal Revenue Code in respect of compensation for personal services covering a period of more than thirty-six months all of which was received in the year 1946 by a partnership (as defined in the Code) of which petitioner was a member.

STATEMENT.

An attorney worked on certain litigation over a period of 53 months ended in February 1946. After 40 months the attorney asked petitioner, another attorney, to join him as a principal. Petitioner did so, and they worked together

on the litigation in partnership as joint venturers for the remaining 13 months until its conclusion, when the partnership received its fee and the fee was divided (R. 36-37). In his income tax return for 1946 petitioner spread his share of the fee ratably over the 53 months from the commencement until the conclusion of the litigation. The Bureau of Internal Revenue denied that petitioner was entitled to the benefits of I. R. C. Sec. 107 (a), and proposed a deficiency which petitioner paid. Upon denial of his claim for refund petitioner began this suit for refund of the deficiency so paid, the District Court gave judgment for petitioner, and the Court of Appeals reversed.

OPINIONS BELOW.

The opinions of the District Court appear at pages 22-24 and 36-38 of the record and are reported in 108 F. Supp. 32 and 107 F. Supp. 499. The opinion of the Court of Appeals appears at pages 46-50 of the record and is reported in 204 F. 2d 25.

JURISDICTION.

The judgment of the Court of Appeals was entered on May 13, 1953 (R. 50). The jurisdiction of this Court is invoked under 62 Stat. 928, 28 U. S. C. A. § 1254 (1).

STATUTE AND REGULATION INVOLVED.

Internal Revenue Code:

Sec. 107 (a) [added by Revenue Act of 1939, c. 247, Title II, Sec. 220 (a), 53 Stat. 878; as amended by Revenue Act of 1942, c. 619, Title I, Sec. 139 (a), 56 Stat. 837]:

> "(a) Personal Services. If at least 80 per centum of the total compensation for personal services covering a period of thirty-six calendar months or more

(from the beginning to the completion of such services) is received or accrued in one taxable year by an individual or a partnership, the tax attributable to any part thereof which is included in the gross income of any individual shall not be greater than the aggregate of the taxes attributable to such part had it been included in the gross income of such individual ratably over that part of the period which precedes the date of such receipt or accrual."

Sec. 3797 (a) (2) [as effective prior to amendment by Revenue Act of 1951, 65 Stat. 511]:

"(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

• • • • •

"(2) Partnership and Partner. The term 'partnership' includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation; and the term 'partner' includes a member in such a syndicate, group, pool, joint venture, or organization."

Treasury Regulations 111, promulgated under the Internal Revenue Code:

"Sec. 29.107-1. Personal Services:

• • • • •

"It is not necessary, in order for section 107 (a) to be applicable, that the individual who includes in his gross income compensation for such personal services be the person who renders the services. For example, a partner who shares in the compensation for such personal services rendered by the partnership may be entitled to the benefits of section 107 (a), notwithstanding that he took no part in the rendering of such services."

QUESTION PRESENTED.

May a tax benefit, unequivocally conferred by the plain terms of the Internal Revenue Code, be denied because those plain terms are deemed to be inconsistent with an assumed intention of the legislature?

REASONS FOR GRANTING THE WRIT.

The discretionary power of this Court to grant a writ of certiorari is invoked upon the following grounds:

(1) The decision of the present case by the Court of Appeals for the Seventh Circuit is in conflict with decisions of other Courts of Appeals. *Commissioner* v. *Marshall* (C. A. 3rd) 185 F. 2d 674, affirming 14 T. C. 90, *Commissioner* v. *Nielson* (C. A. 9th), 187 F. 2d 233, *Hofferbert* v. *Marshall* (C. A. 4th), 200 F. 2d 648.

(2) An important question of income tax law is involved which has not been, but should be, settled by this Court.

Wherefore, it is respectfully submitted that this petition for a writ of certiorari to the Court of Appeals for the Seventh Circuit should be granted.

Respectfully submitted,

HUBERT VAN HOOK,
Petitioner.

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HUBERT VAN HOOK,

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UNITED STATES OF AMERICA,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI.

STATEMENT OF THE CASE.

The essential facts of the case are stated in the accompanying petition.

JURISDICTION.

The jurisdiction of this Court is shown in the accompanying petition.

OPINIONS BELOW.

The opinions of the District Court appear at pages 22-24 and 36-38 of the record and are reported in 108 F. Supp. 32 and 107 F. Supp. 499. The opinion of the Court of Appeals appears at pages 46-50 of the record and is reported in 204 F. 2d 25.

SPECIFICATION OF ERRORS.

If a writ of certiorari is issued, petitioner intends to urge that the Court of Appeals for the Seventh Circuit erred—

(1) In holding that petitioner was not entitled to invoke the special benefits of I. R. C. Sec. 107 (a).

(2) In refusing to affirm the decision of the District Court that petitioner came plainly within the unequivocal terms of the section, and so was entitled to judgment.

ARGUMENT.

Petitioner's Situation Comes Plainly Within the Unequivocal Provisions of I. R. C. Sec. 107 (a), and in Such Case There Is No Room for Construction.

Concededly, "provisions granting special tax exemptions are to be strictly construed," *Helvering* v. *Northwest Steel Rolling Mills,* 311 U. S. 46, 49. But equally well settled is the proposition that an exemption plainly granted must be allowed, *Crooks* v. *Harrelson,* 282 U. S. 55, 59-61.

Here, the District Court found as facts that in September 1941 Thomas C. McConnell, an attorney, began work on a lawsuit, that in February 1945 petitioner, also an attorney, began working on the case with McConnell at the latter's request, that each had an interest in the outcome of the case, and that there was an express understanding between McConnell and petitioner in 1945 that each was to share in the profits or expenses of the litigation. The court concluded that a joint venture existed which qualified as a partnership under I. R. C. Sec. 3797 (a) (2) and 107 (a) (R. 36-38). The Court of Appeals recognized that a joint venture existed but refused to give it effect (R. 48).

As originally added to the Internal Revenue Code by the Revenue Act of 1939 Section 107 provided:

> "In the case of compensation (a) received, for personal services rendered by an individual in his individual capacity, or as a member of a partnership, and covering a period of five calendar years or more from the beginning to the completion of such services, (b) paid (or not less than 95 per centum of which is paid) only on completion of such services, and (c) required to be included in gross income of such individual for any taxable year beginning after December 31, 1938,

> the tax attributable to such compensation shall not be greater than the aggregate of the taxes attributable to such compensation had it been received in equal portions in each of the years included in such period."

In *Lindstrom* v. *Commissioner*, (C. A. 9th), 149 F. 2d 344, cited by the Court of Appeals (R. 49), Eckman started work for certain clients in April 1933. On May 1, 1936 Eckman and Lindstrom formed a law partnership. In 1940 their fee was agreed to, received, and divided between them. The court refused to allow Lindstrom to spread his share, because he and the partnership had no share in earning the fee prior to May 1, 1936, pointing out (p. 346) that:

> "The subsequent amendment of this section by Section 139 of the Revenue Act of 1942 does not apply as it relates only to taxable years beginning after December 31, 1940."

and saying (p. 346):

> "The only way Lindstrom could meet the requirements of Section 107 would be to tack Eckman's prior individual services onto the services later rendered by the partnership."

In applying Section 107(a), as amended in 1942, to the instant case, which involves closely similar facts, the Court of Appeals said (R. 50):

> "We hold that the taxpayer was not entitled to tack the prior period of services rendered by McConnell to the subsequent period of services performed jointly by McConnell and taxpayer."

This language erroneously applies Section 107 as originally enacted and not as amended in 1942, because under the section as amended the issue as to "tacking" cannot arise.

In *Elder W. Marshall*, 14 T. C. 90, affirmed and approved by the Third Circuit in *Commissioner* v. *Marshall*, 185 F. 2d 674 and approved in *Commissioner* v. *Nielson*, 187 F.

2d 233 by the Ninth Circuit which had decided *Lindstrom* v. *Commissioner*, 149 F. 2d 344, the Tax Court pointed out (p. 93) that:

> "A comparison of the language of the section before and after the amendment demonstrates * * * that emphasis was reversed by the new provision and was removed from the person who renders the services to the person who is required to report the income."

The Tax Court also quoted a statement fully supported by decisions of this Court (14 T. C. 94) that:

> "The will of Congress has been plainly expressed in language that does not permit or require a strained or unnatural interpretation. The words of the statute may not be extended or distorted beyond their plain, popular meaning, *Lindstrom* v. *Commissioner*, 149 F. 2d 344, 346."

Similar views were recently expressed by the Fourth Circuit in *Hofferbert* v. *Marshall*, 200 F. 2d 648, which said (p. 650):

> "That the section as amended in 1942 is applicable to income not earned by the taxpayer does not admit of question."

CONCLUSION.

From the foregoing it is apparent that there is a head-on conflict of decision between the Third, Fourth and Ninth Circuits on the one hand and the Seventh Circuit on the other, and that an important question of income tax law is involved which has not been, but should be, settled by this Court.

It is, therefore, respectfully urged that this petition for certiorari should be granted.

Respectfully submitted,

HUBERT VAN HOOK,
Petitioner.